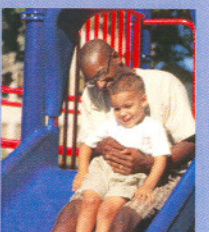
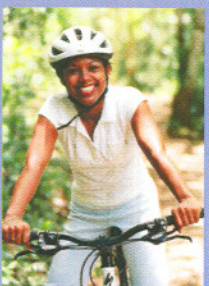




U.S. Consumer Product Safety Commission



TESTIMONY OF THE HONORABLE NANCY A. NORD ACTING CHAIRMAN

SUBMITTED TO
COMMITTEE ON ENERGY AND COMMERCE
SUBCOMMITTEE ON COMMERCE, TRADE AND
CONSUMER PROTECTION

September 19, 2007

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TESTIMONY

The Honorable Nancy A. Nord
Acting Chairman
U.S. Consumer Product Safety Commission

before the

Committee on Energy and Commerce
Subcommittee on Commerce, Trade, and Consumer Protection
September 19, 2007

Mr. Chairman:

Thank you for inviting me to testify today on the critical issue of protecting the American public from unsafe consumer products, including imported children's products that contain lead. Eliminating children's exposure to lead in consumer products has consistently been among the highest priorities of the U.S. Consumer Product Safety Commission (CPSC) and has been part of our core mission since the inception of the agency in 1973.

The history of the CPSC's actions to abate lead hazards is well-known and well-respected. When products that expose children to lead are discovered in U.S.

distribution channels in violation of our laws, the CPSC acts decisively. We have a very active lead program, both to enforce the statutory ban on lead paint for home use and to analyze and act upon accessible lead in a variety of other products.

While the issue of lead exposure to children unquestionably continues to be a serious one, the United States has made dramatic progress on this front. A federal study of the issue estimated that the percentage of children aged one to five years old with blood lead levels in excess of ten micrograms per deciliter had declined from 77.8 percent for the four-year period starting in 1976 to 1.6 percent for the period 1999 to 2002.

While the phase-out of leaded gasoline and the CPSC ban on lead paint are key factors behind this progress, deteriorating lead paint in older dwellings remains the primary source of lead intake for children. The CPSC has been and continues to be ever vigilant and assertive in this ongoing war against children's exposure to lead in products under our jurisdiction.

Examples of the actions that the CPSC has taken over the last decade include:

1996 - CPSC staff found that certain vinyl mini-blinds deteriorated when exposed to heat and sunlight, creating lead dust that could be ingested. At the Commission's insistence, the industry ceased manufacture of vinyl mini-blinds that posed the risk.

1998 - The Commission issued a policy statement urging manufacturers to eliminate lead in all children's products and published this guidance in the Code of Federal Regulations.

2000 - CPSC staff discovered lead in certain candy wrappers on candy imported from Mexico, and at CPSC's insistence, the importation of such candy was terminated.

2003 - The Commission promulgated a regulation banning candles having candlewicks containing more than 0.06 percent lead.

2004 - CPSC's lead hazard reduction efforts were further expanded with an initiative focused on children's metal jewelry after staff tested samples and found a significant number contained high levels of accessible lead. That initiative resulted in the recalls of more than 150 million pieces of inexpensive children's metal jewelry.

2005 - The CPSC issued a new enforcement policy and testing protocol specifying how to test for accessible lead in children's metal jewelry and recommending screening under CPSC test procedures. Since that time, importers and retailers have recalled millions of additional potentially unsafe children's metal jewelry products.

2006 – The Commission commenced a rulemaking that may result in a regulation effectively banning lead in children’s metal jewelry.

2007 – The CPSC is currently engaged with ASTM, a standards development organization, to develop a new product safety standard to eliminate or significantly reduce children’s exposure to lead in children’s vinyl products.

The Commission acts on a product hazard, whether through recalls or regulation, under the legal authority that Congress has provided in our governing statutes. The Commission banned lead paint on toys and children’s furniture in 1978. The agency has vigorously enforced that ban ever since, including through the highly publicized toy recalls this summer.

This ban on lead paint contrasts with our statutory authority for dealing with lead and other heavy metals that might be found in children’s products. The popular notion that CPSC has the authority to issue a rule that bans any lead in all “children’s products” is erroneous; the law requires that the agency consider exposure and risk by the product.

The Federal Hazardous Substances Act (FHSA) does not authorize CPSC to regulate lead in a product unless it may cause “substantial personal injury” or “substantial illness” under “reasonably foreseeable” conditions of use. That statute itself bans “any

toy or other article intended for use by children, which is a hazardous substance, or which bears or contains a hazardous substance in such manner *as to be susceptible of access* by a child to whom such toy or other article is entrusted.”

I underscore this distinction because the significant recalls that the CPSC has announced this summer with regard to lead involve two distinct classes of children’s products, that is, those that bear banned lead paint, such as Thomas the Tank Engine, and those that have accessible lead content, such as children’s metal jewelry. As noted above, lead paint in children’s products has been banned since 1978, and the Commission has initiated a rulemaking to ban on lead in children’s metal jewelry.

The Congress was farsighted when it crafted the CPSC’s governing statute. When the law was written in 1973 (and I would note Chairman Dingell’s key role in authoring and enacting this important legislation), Congress recognized that this new agency could not impose U.S. law on foreign manufacturers, so our statutes hold everyone in the stream of commerce in the U.S. responsible and potentially liable. In brief, the American importer, as well as the domestic distributor and retailer, is held responsible for complying with U.S. rules.

However, what the Congress could not foresee 34 years ago was the reliance on imports that we are now facing. That is one reason that I believe it is in the best

interests of consumer product safety to modernize CPSC's statutes and to strengthen the agency's hand in protecting the American public.

As you know, the CPSC was last reauthorized by Congress in 1990 for a period of two years. The marketplace has changed dramatically in the seventeen years that have passed since Congress last revised our statutes. Not only are there new technologies that have emerged, and continue to emerge, in creating and manufacturing products, but also technology has significantly changed the way that consumers shop and purchase goods and the way that the public receives information. Most of America's consumer products, not just toys, now come from overseas manufacturers. Much has changed in the marketplace, in technology and in communications since 1990.

The result is that the inspection and enforcement tools at the agency's disposal with respect to imported products are not as strong as they need to be. This is one of the key reasons that several months ago I sent to Congress legislative proposals aimed at improving the safety of both imports and domestically produced products through a variety of means. Many of these proposals are reflected in various bills that have been introduced in both the House and the Senate.

In addition to the dramatic shift from domestically produced consumer goods to imports, other challenges require the modernization of the CPSC's statutory authorities.

For example, I have proposed that in instances of direct-to-consumer sales from overseas manufacturers (including those via the Internet), the foreign manufacturer or exporter be the U.S. importer of record.

My legislative proposals are the first part of a multi-pronged approach that the agency is pursuing to address the issue of Chinese imports. In addition to modernization of our governing statutes, the CPSC's initiative includes dialogue and initiatives with the Chinese government; working with the private sector including Chinese manufacturers directly; and increased surveillance and enforcement activities at the borders and within the marketplace.

Historically, CPSC has not actively engaged in international activities. However, in 2004, recognizing the continuous and significant increase in the number of imported consumer products entering the American marketplace from China, my predecessor became the first Chairman of the CPSC to travel to that country. That first step was the genesis for a formal relationship between the CPSC and the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ), our counterpart agency in China, and it resulted in the signing of a Memorandum of Understanding (MOU) between our two nations later that year. Since becoming Acting Chairman last year, I have viewed the task of building upon that foundation as one of my highest priorities.

In 2005, at the first U.S.-Sino Product Safety Summit, the CPSC signed an Action Plan on Consumer Product Safety with AQSIQ. The Action Plan created Working Groups to address issues in four priority areas—fireworks, lighters, electrical products and toys.

The tasks of the Working Groups are to develop strategies to address safety problems; to be able to respond quickly to urgent product safety issues; to exchange information on changes to safety standards; and to exchange laboratory and inspection personnel in each other's respective facilities.

At the beginning of this year, we identified and communicated to our Chinese counterparts specific problems and proposed actions to address these problems with respect to each of the four product categories covered by the Working Groups. One of the problems we flagged was the use of lead paint on toys in contravention of our ban. In May 2007, I traveled to China with a delegation of top CPSC officials for in-depth discussions of the issues identified by this process.

This hard work culminated last week at the U.S.-Sino Product Safety Summit held here in Washington between the CPSC and our Chinese counterpart agency, AQSIQ. I am pleased to report that we reached an important agreement with AQSIQ, under which China will immediately implement a plan to eliminate the use of lead paint on Chinese

manufactured toys exported to the United States. They are going to make sure there is no lead in the paint through inspections of U.S. destined toys and a certification system for paint suppliers.

Since China has a weaker standard for lead paint than the United States, it is really quite extraordinary that the Chinese agreed to enforce the stricter American standard.

China also agreed to broad cooperation with the CPSC in the four major product areas that I mentioned above. In each of the four work plans, China has agreed to cooperate with the CPSC to ensure that its producers understand and comply with U.S. safety standards for all of their exports to the United States. The work plans provide a roadmap to improve the safety of these products through five main avenues:

First, in cooperation with the CPSC, AQSIQ has agreed to increase its inspections of products destined for the U.S. and to undertake other activities to ensure that exports meet all applicable safety standards. They have even pledged to encourage Chinese manufacturers to meet UL "voluntary" standards for electrical products.

Second, AQSIQ, again in full cooperation and participation with the CPSC, will expand the knowledge and understanding of U.S. product safety standards among Chinese manufacturers and exporters.

Third, the CPSC and AQSIQ have agreed to various technical personnel exchanges and training activities to ensure full and mutual understanding of our respective laws and systems, including product testing methodologies.

Fourth, we have respectively agreed to establish regular and systematic exchanges of information about emerging product safety issues, including monthly discussions of recall activities and trends.

Fifth, AQSIQ has agreed to specific steps to assist the CPSC in tracing products with identified safety problems to those Chinese firms involved in their manufacture, distribution and export. This will enable both of our agencies to better and more quickly address safety issues as they arise.

This is significant achievement, and while it is in China's economic interest to enforce U.S. safety standards, we will nonetheless be following up to assure that the Chinese government fully implements this commitment. The CPSC will need to stay engaged with the Chinese in order to get the follow through that we are looking for. I am committed to that.

The third prong of our plan to address Chinese imports is to work with the private sector, both here in the U.S. as well as in China, to educate the Chinese manufacturers and exporters not only of the content of U.S. product safety standards, but also the importance of adhering to those standards, including adhering to consensus or what we commonly call “voluntary” standards.

As part of our plan to address this problem, in 2005 the CPSC published the *Handbook for Manufacturing Safer Consumer Products* underscoring our message that safety must be designed and built into consumer products in conformance with safety systems planned, established and implemented at the direction of executive management. The *Handbook* presents a comprehensive systematic approach to manufacturing safe products and has been published in Chinese and distributed throughout China.

In 2006 CPSC facilitated the translation of the summary provisions of nearly 300 U.S. mandatory and voluntary consumer product safety standards into Chinese to assist Chinese manufacturers in understanding what U.S. product safety standards require when manufacturing various products. CPSC determined which standards would be translated primarily by analyzing what imported Chinese products were recalled in the largest numbers and selecting the corresponding U.S. mandatory or voluntary standards for translation. The translation of these provisions of U.S. product safety standards

facilitates Chinese manufacturers' understanding of what is required of them when they manufacture products for the U.S. market.

The CPSC has also conducted industry-specific safety seminars and retail and vendor training seminars in China. Staff has conducted a number of other safety training activities in China dealing with toy safety, electrical product safety, fireworks safety and a supplier safety seminar for retailers.

Finally, we are undertaking conversations with specific industry groups to encourage testing and certification programs. For example, ANSI and other standards, industry and retail groups are considering the development of testing and certification programs. The toy industry has already announced plans to move forward with such a program.

The fourth prong of our plan of action for Chinese imports is increased surveillance and enforcement activities. Although the Commission was without a quorum for over six months, the agency has been active in addressing the challenge of imported products, not only directly with the Chinese government, but also here in the United States. In Fiscal Year 2006, the CPSC announced an all-time record number of recalls of defective products. These recalls represented a wide range of consumer products and product hazards. Over two-thirds of these recalls were of imported products, primarily from China.

CPSC's Compliance staff working in conjunction with U.S. Customs and Border Protection (CBP) undertakes both routine and targeted surveillance and sampling of products at U.S. ports of entry. CPSC recently began participating in the Automated Commercial Environment (ACE). ACE is the new U.S. CBP processing system that strengthens our ability to identify likely shipments of non-compliant products before they arrive at U.S. ports. Our early experience with using the ACE system indicates that it will provide us with better data at an earlier point in the process so that our port inspection activities can be precisely targeted and thus more effective.

CPSC obviously attempts to keep dangerous products from entering into the country in the first instance. However, in the event a defective product does enter the stream of commerce, CPSC has been taking stronger measures to effectively remove such products from the marketplace. For example, after a product has been recalled, CPSC has stepped up the number of recall verification inspections of the recalling firms to ensure the product is being removed from the marketplace. CPSC has also adopted a new practice of notifying major retailers of all CPSC recalls, as well as routinely conducting internet searches for sales of recalled products.

In contrast to the Food and Drug Administration or the Department of Agriculture, the CPSC is a small agency without the resources or authority to perform overseas pre-

inspections or large-scale port screening for all of the items under our jurisdiction. In fact, CPSC has no direct authority to handle imported products at the ports, much less to detain or seize them. Our statutes recognize that Customs and Border Protection has the direct authority to deal with imported products at the ports of entry.

We are committed to our mission, and within the constraints of our authorities and resources, the staff at the CPSC enforces the law aggressively. In view of the recalls that the CPSC has announced this year, parents and caregivers are understandably concerned. The Commission and the CPSC staff respect this concern, and whether the product is manufactured overseas or here in the United States, our goal is to keep unsafe products out of the stream of commerce and out of America's homes, yards and recreation areas.

Thank you for this opportunity to testify this morning and I look forward to answering your questions.